



Department of Energy

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AUG 19 1993

Ms. Dru Butler, Program Manager
Nuclear and Mixed Waste Program
State of Washington
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Mr. George C. Hofer, Chief
Hazardous Waste Division
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101



Dear Ms. Butler and Mr. Hofer:

ISSUANCE OF A REVISED DRAFT HANFORD FACILITY DANGEROUS WASTE PERMIT

The purpose of this letter is to document the concerns that the U.S. Department of Energy, Richland Operations Office (RL), the Westinghouse Hanford Company (WHC), and the Pacific Northwest Laboratory (PNL) have with the September 15, 1993, issuance date for a revised Draft Hanford Facility Dangerous Waste Permit (Draft Permit) being proposed by the U.S. Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) (as documented in a letter from the EPA and Ecology dated July 27, 1993, and in a follow up letter from Ecology dated August 6, 1993). These concerns are three-fold and relate to the need for: (1) the development of a revised Draft Permit issuance and permit modification schedule mutually agreeable to all parties; (2) sufficient time and mutually agreed upon criteria to address approximately 15 key permitting issues; and (3) assurance that permit application completeness, disclosure, and certification requirements have been satisfied. The enclosed information documents these concerns and provides a recommended approach that can be followed to achieve their resolution. Elements of this approach are summarized as follows:

- Prepare a revised Draft Permit and permit modification schedule that is mutually agreed upon by the EPA, Ecology, and RL;
- Discuss and resolve the key permitting issues based on mutually agreed upon criteria;
- Conduct in accordance with the Hanford Federal Facility Agreement and Consent Order (FFACO), a review and notice of deficiency cycle for the Hanford Facility Dangerous Waste Permit Application, General Information, submitted on June 25, 1993 (Document DOE/RL-91-28, Revision 1);
- Provide a written notification of permit application completeness in accordance with 40 Code of Federal Regulations (CFR) 270.1(c)(4) and Washington Administrative Code (WAC) 173-303-840(1)(b);

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- Provide a Certification Policy which documents Ecology's interpretation of the requirements of WAC 173-303-810(12) and (13); and,
- Initiate more expeditious use of the FFACO informal issue resolution process, or other means of issue elevation.

We appreciate Ecology's commitment in their letter of August 6, 1993, to remain open to modification of the September 15, 1993, revised Draft Permit issuance schedule, should conditions warrant. At an August 5, 1993, meeting to discuss the key permitting issues, we recommended to your staff that before a decision is made to proceed with the mid-September Draft Permit issuance date, a joint meeting be held among the EPA, Ecology, and RL management to ensure that all parties are aware of the status of issue resolution. Based on the proposed Draft Permit issuance schedule, this meeting should be held the week of August 23, 1993.

RL, WHC, and PNL remain fully supportive of the timely issuance of a revised Draft Permit that is consistent with the regulatory provisions and the agreement of the parties to the FFACO. We will continue to work with you and members of your staff in achieving that goal.

Should you have any questions, please contact Mr. C. E. Clark, RL, on (509) 376-9333, Mr. R. C. Brunke, WHC, on (509) 376-2663, or Mr. H. T. Tilden II, PNL, on (509) 376-0499.

Sincerely,

Robert G. Holt

Robert G. Holt, Acting Program Manager
Office of Environmental Assurance,
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Richland Operations Office

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Pacific Northwest Laboratory

Enclosure

cc w/encl:

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Administrative Records, H6-08

INTRODUCTION

This Enclosure documents the concerns that the U.S. Department of Energy, Richland Operations Office (RL), the Westinghouse Hanford Company (WHC), and the Pacific Northwest Laboratory (PNL) have with the September 15, 1993, issuance date for a revised Draft Hanford Facility Dangerous Waste Permit (Draft Permit) being proposed by the U.S. Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) (as documented in a letter from the EPA and Ecology dated July 27, 1993, and in a follow up letter from Ecology dated August 6, 1993). These concerns are three-fold and relate to the need for: (1) the development of a revised Draft Permit issuance and permit modification schedule mutually agreeable to all parties; (2) sufficient time and mutually agreed upon criteria to address approximately 15 key permitting issues; and (3) assurance that permit application completeness, disclosure, and certification requirements have been satisfied. This enclosure further documents an approach that is recommended to resolve these concerns.

DEVELOPMENT OF REVISED DRAFT PERMIT ISSUANCE AND PERMIT MODIFICATION SCHEDULE

In December 1992, the EPA and Ecology conducted a review of waste acceptance procedures at the 616 Nonradioactive Dangerous Waste Storage Facility (616) and 305-B Storage Unit (305-B). Six months later, on June 16, 1993, a letter was received from the EPA and Ecology requesting the submittal, within 45 days, of "revised Waste Analysis Plans for the 616 and 305-B Storage Facilities to include detailed waste characterization and supporting data." No mention was made in this letter, or in a follow-up meeting held on July 8, 1993, as to why such a relatively short turn-around time was required to respond to these comments. On July 27, 1993, RL, WHC, and PNL issued a letter stating that due to the complexity and Hanford Facility-wide impact of these comments, a certified revision of these waste analysis plans could not be completed until October 15, 1993. On that same day, a letter was issued by the EPA and Ecology stating that a submittal date of August 31, 1993, was required for these plans "in order to ensure that EPA and Ecology receive a timely certified response from Energy, and that the 616 and 305-B Facilities Part B permit applications are complete in preparation of a revised draft Hanford Federal Facility RCRA Permit." This letter further stated that the revised Draft Permit is scheduled to be issued for a sixty-day Public Comment period on September 15, 1993.

The EPA's and Ecology's July 27, 1993, letter constitutes the first formal documentation of a Draft Permit issuance schedule ever received by RL, WHC, and PNL, despite repeated informal and formal requests for such documentation since 1990 (e.g., letters dated August 28, 1990, September 18, 1991, October 3, 1991, and March 12, 1992). If a revised Draft Permit issuance schedule had been formally agreed to in advance by all parties, it is likely that the scheduling conflict between the issuance of the 616 and 305-B revised waste analysis plans and the revised Draft Permit could have been avoided.

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Most recently, we discussed the essential need for such a schedule at meetings held with members of your staff on September 22, 1992, on June 10, 1993, and on August 5, 1993. At the September 1992 and June 1993 meetings, we provided to the EPA and Ecology a proposed revised Draft Permit issuance schedule and requested that comments be provided. To date, none have been received. At the June 1993 meeting, we also provided scheduling information that could serve as the basis to develop a five-year permit modification schedule. We contend that unless such a schedule is mutually developed and maintained, establishment of priorities and the efficient management of resources cannot be achieved. We therefore strongly recommend that such a mutually agreed upon schedule be developed. We are concerned that at the August 5, 1993, meeting the immediate need for such a schedule was again down-played by both EPA and Ecology. We further contend that Ecology's current estimated biennial Mixed Waste Management Fee provided to us in a letter dated July 9, 1993, should be based on such a schedule.

RESOLUTION OF KEY PERMITTING ISSUES

We are concerned that the proposed September 15, 1993, revised Draft Permit issuance date does not allow sufficient time to work through approximately 15 key permitting issues that were identified in our March 16, 1992, comments issued on the initial Draft Permit. Efforts to resolve these issues were under way in the summer and fall of 1992. At our last meeting held on September 22, 1992, and in the subsequent eight months, we were informed that the EPA and Ecology needed to confer between themselves before reconvening discussions with RL and their contractors. Per RL's request, a meeting was held with the EPA and Ecology on June 10, 1993, specifically to discuss what could be done to re-institute issue resolution meetings.

We contend that it would be most beneficial to all parties if key permitting issues could be resolved prior to issuance of a revised Draft Permit. In developing our March 16, 1992, comments on the initial Draft Permit, it became clear that there were five general underlying concerns that formed the basis for most of our specific comments. In an effort to make our comments easier to understand and evaluate, we defined five criteria and based each comment on one or more of these criteria. These criteria were that the permit requirements must be:

- Consistent with the Hanford Federal Facility Agreement and Consent Order (FFACO)
- Based on clear regulatory authority
- Reflect an appropriate level of control
- Consistent with other RCRA permits issued in Washington State
- Consistent with cost effectiveness and management efficiency.

Our intent in defining these five criteria, and in using them as a basis for our comments, was to enable the EPA and Ecology to respond to our comments using these same criteria. We were unsuccessful in setting up a meeting with the EPA and Ecology for the purpose of mutually agreeing upon these criteria before we submitted our March 16, 1992, comments. In the August 5, 1993, meeting, the need to define and to use such criteria was again down-played by the EPA and Ecology. We are again requesting that RL, WHC, PNL, and the EPA and Ecology mutually define and agree upon criteria for the purpose of resolving the 15 key issues and for commenting and responding to any other comments that may come as a result of the revised Draft Permit. We believe this approach will give all parties the best opportunity to achieve a satisfactory resolution of outstanding issues. We appreciate Ecology's reference to the use of such criteria in their August 6, 1993, letter.

The recommended approach could help reduce the number of our comments generated during the Public Comment period as well as help reduce the possibility that a costly appeal process, and possibly litigation, would need to be pursued. We contend that this approach is consistent with Ecology's July 20, 1993, "Hanford Waste Management and Environmental Restoration Policy Guidance" (page 2, paragraph 3) and, in keeping with that policy guidance, is the most reflective of mutual cooperation and fiscal responsibility.

On July 28, 1993, we received from EPA a revised Corrective Action section of the Draft Permit. On July 29, 1993, we received a letter from Ecology transmitting advance copies of selected portions from the Draft Permit relating to some of the approximately 15 key permitting issues. Our meeting with members of your staff on August 5, 1993, to discuss these portions was productive and resulted in positive steps toward resolving key permitting issues. Based on discussions held at this meeting, we are committed to forwarding proposed revised text for those portions of the Draft Permit provided to us. However, we are still concerned that the limited time period allowed for provision of our comments (i.e., by August 13, 1993), and the limited time period allowed for Ecology's comment incorporation (i.e., by August 18, 1993), are insufficient to successfully resolve issues. We are particularly concerned that the portions of the text we received on July 28, 1993, do not fully cover all places within the Draft Permit where these issues are addressed. Therefore, RL, WHC, and PNL reserve their legal rights, both individually and jointly, to formally comment on or challenge any single permit condition, part of a condition, or the entire permit as appropriate under federal or state laws.

We appreciate Ecology's commitment in their letter of August 6, 1993, to remain open to modification of the September 15, 1993, revised Draft Permit issuance schedule, should conditions warrant. At the August 5, 1993, meeting, we recommended that before a decision is made to proceed with the mid-September Draft Permit issuance date, a joint meeting be held among the EPA, Ecology, and RL management to ensure that all parties are aware of the status of issue resolution. Based on the proposed Draft Permit issuance schedule, this meeting should be held the week of August 23, 1993.

Ecology's letter dated August 5, 1993, raised the "potential for precedents set by individual unit conditions" as a potential stumbling block in getting the Draft Permit issued in a timely way. With regards to issue resolution proceedings, we recognize the need to delegate decision-making authority to Ecology's unit managers, as well as our own unit managers, in order to expeditiously proceed with the permitting process. We have found that the majority of issues raised at the unit manager level have been able to be resolved at that level and are not precedent setting. However, we contend that unit manager deliberations must be accompanied by a recognition that Hanford is a single Resource Conservation and Recovery Act Facility. In order to achieve and maintain consistency, certain issues, such as the 15 key permitting issues, must be dealt with from a facility, rather than a unit, perspective. We believe that valuable time and effort will be saved in the long run if Ecology's unit managers, as well as our own unit managers, evaluate all issues from a precedent-setting perspective. In this context, we contend that more attention should be given in the future to the expeditious use of the FFACO informal issue resolution process, or other means of issue elevation, if issues having broader implications cannot be resolved at the unit level.

Of immediate concern to the issuance of the revised Draft Permit is the resolution of the waste verification issue, one of the approximately 15 key permitting issues (i.e., Onsite Waste Movement). This issue has been raised in 616 and 305-B unit manager meeting discussions, notices of deficiency, and, most recently, in the EPA's and Ecology's waste analysis plan comments dated June 16, 1993. As both these units accept waste from nearly all generating units on the Hanford Facility, we contend that resolution of the verification issue has significant Facility-wide implications and is of a precedent-setting nature. The October 15, 1993, submittal date for revised 616 and 305-B waste analysis plans, as specified in our July 27, 1993, letter, is predominantly driven by the need to satisfactorily resolve the verification issue. At the August 5, 1993, meeting, discussion of the verification issue was largely deferred as a 616 and 305-B specific issue. We contend that this is a key issue whose lack of resolution could impact the September 15, 1993, revised Draft Permit issuance date.

SATISFACTION OF PERMIT APPLICATION COMPLETENESS, DISCLOSURE, AND CERTIFICATION REQUIREMENTS

The "Hanford Facility Dangerous Waste Permit Application" is a single application organized into a General Information Portion (Document DOE/RL-91-28) and a treatment, storage, and/or disposal (TSD) Unit-Specific Portion, which includes documentation for individual TSD units. In satisfaction of the FFACO Milestone M-20 schedule, Part B permit application documentation has been submitted for several Hanford Facility TSD units. Upon written notification of completeness from the EPA and Ecology, one or more of these final, certified documents (e.g., for 616 and 305-B) along with Document DOE/RL-91-28 constitute a complete Dangerous Waste Permit Application meeting all requirements of the FFACO, 40 CFR 270.1(c)(4), and WAC 173-303-840(1)(b).

We are concerned that the proposed revised Draft Permit issuance date of September 15, 1993, does not enable the required completeness determination and notification to be made as specified in 40 CFR 270.1(c)(4) and WAC 173-303-840(1)(b). As noted in our letter of July 27, 1993, we can not ensure that certified copies of the revised 616 and 305-B waste analysis plans will be able to be forwarded to the EPA and Ecology before October 15, 1993. This time frame is consistent with the notice of deficiency cycle contained in the FFACO.

In addition, we are concerned as to the status of the revised General Information portion of the Hanford Facility permit application submitted on June 25, 1993 (Document DOE/RL-91-28). This document was submitted in accordance with WAC 173-303-806(12)(b) and -810(14)(h). As noted in our June 25, 1993, transmittal letter, Revision 1 supersedes Revision 0 of this document (DOE/RL-91-28) issued on October 3, 1992, and must be used as the basis for the revised Draft Permit. We contend that in accordance with the FFACO, a review and notice of deficiency cycle for Revision 1 should occur.

In accordance with 40 CFR 270.1(c)(4) and WAC 173-303-840(1)(b), we are requesting that we receive written notification as to the completeness of our application. We are particularly interested in an explanation as to how document DOE/RL-91-28, Revision 1, and the revised 616 and 305-B waste analysis plans, will be factored into the revised Draft Permit now that the proposed issuance date is September 15, 1993.

Ecology's letter dated August 5, 1993, raised the "certification of transmitted documents" as a potential stumbling block in getting the Draft Permit issued in a timely way. With regards to the certification of transmitted documents, we appreciate Ecology's clarification that your Department "will not take enforcement actions for accidental omissions, misrepresentations and inconsistencies." We have previously sought clarification from Ecology regarding such enforcement as well as our concerns with the Signatory Requirement of WAC 173-303-810(12). The WAC 173-303-810(12) requires that, in addition to applications, all reports or information submitted to Ecology shall be certified. We believe this is an opportune time for Ecology to develop a Certification Policy that documents the intent of certification and what reports or information submitted to Ecology truly need to be certified. We would be willing to work with Ecology to develop such a policy. This policy could also be used as a basis for re-evaluating and streamlining our certification process.

Of immediate concern to the issuance of the revised Draft Permit is the certification of revised 616 and 305-B waste analysis plans. The October 15, 1993, submittal date for these certified plans, as specified in our July 27, 1993, letter, is predominantly driven by the need to satisfactorily resolve the verification issue, rather than the length of the certification process.

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SUMMARY OF RECOMMENDED APPROACH
TO CONCERN RESOLUTION

The recommended approach to concern resolution is summarized as follows:

- Prepare a revised Draft Permit and permit modification schedule that is mutually agreed upon by the EPA, Ecology, and RL;
- Discuss and resolve the key permitting issues based on mutually agreed upon criteria;
- Conduct in accordance with the FFACO, a review and notice of deficiency cycle for the Hanford Facility Dangerous Waste Permit Application, General Information, submitted on June 25, 1993 (Document DOE/RL-91-28, Revision 1);
- Provide a written notification of permit application completeness in accordance with 40 CFR 270.1(c)(4) and WAC 173-303-840(1)(b);
- Provide a Certification Policy which documents Ecology's interpretation of the requirements of WAC 173-303-810(12) and (13); and,
- Initiate more expeditious use of the FFACO informal issue resolution process, or other means of issue elevation.

We appreciate your consideration of our proposed concern resolution approach and await your timely response to our recommendations.

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CORRESPONDENCE DISTRIBUTION COVERSHEET

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Subject: ISSUANCE OF A REVISED DRAFT HANFORD FACILITY DANGEROUS WASTE PERMIT

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